

IN THE
MISSOURI SUPREME COURT

STATE EX REL.)	
ROBERT H. MAMMEN,)	
)	
Relator,)	
)	
vs.)	No. SC94913
)	
HONORABLE THOMAS CHAPMAN,)	
)	
Respondent.)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF
LIVINGSTON COUNTY, MISSOURI
FORTY-THIRD JUDICIAL CIRCUIT
THE HONORABLE THOMAS CHAPMAN, JUDGE

RELATOR'S BRIEF

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JURISDICTIONAL STATEMENT

In this original writ case, Mr. Mammen seeks to compel Judge Thomas Chapman to immediately release him on probation due to the fact that he has completed the long term treatment program established by section 217.362. Because this case is an original writ involving an abuse of discretion by a lower court, the Missouri Constitution grants this Court jurisdiction. Mo. Const. art. V, § 4. That section of the Missouri Constitution grants this Court superintending control over all courts and tribunals and the authority to issue and determine original remedial writs.

STATEMENT OF FACTS

On April 19, 2013, Mr. Mammen was charged by a felony information as a chronic offender with the class B felony of driving while intoxicated. (Ex. 2). Following a jury trial held on November 5, 2013, Mr. Mammen was found guilty of the offense of driving while intoxicated. (Ex. 1). On February 6, 2014, Respondent issued an amended judgment finding Mr. Mammen to be a chronic offender under section 577.023. (Ex. 3). The amended judgment also ordered Mr. Mammen to complete a long-term treatment program under section 217.362. (Ex. 3).

On January 27, 2015, Respondent issued an order of probation finding that Mr. Mammen had completed the long-term substance abuse program. (Ex. 4). Respondent ordered supervised probation for Mr. Mammen to begin on June 24, 2015. (Ex. 4).

On March 30, 2015, Mr. Mammen filed a writ of mandamus in the Western District Court of Appeals (WD78481) seeking to compel Respondent to grant Mr. Mammen's immediate release on probation. The Western District Court of Appeals denied this writ without comment on April 2, 2015. On April 7, 2015, Mr. Mammen filed a writ in this Court seeking the same remedy.

POINT RELIED ON

Respondent exceeded his jurisdiction and abused his discretion in failing to immediately release Mr. Mammen on probation when Mr. Mammen completed the long-term treatment program because Respondent has no authority to keep Mr. Mammen in the Department of Corrections past this date of completion, in that section 217.362 requires Respondent to either allow Mr. Mammen to be released on probation or to execute his sentence at the end of the long-term treatment program; furthermore, section 217.362 should control over the provision in section 577.023 that chronic offenders are not eligible for probation or parole until they have served a minimum of two years imprisonment.

Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo.

banc 1996);

State ex rel. Salm v. Mennemeyer, 423 S.W.3d 319 (Mo. App. E.D. 2014);

State ex rel. Sandknop v. Goldman, 450 S.W.3d 499 (Mo. App. E.D. 2014);

State ex rel. Valentine v. Orr, 366 S.W.3d 534 (Mo. banc 2012);

Missouri Constitution, Article V, Section 4;

Section 217.362; and

Section 577.023.

ARGUMENT

Respondent exceeded his jurisdiction and abused his discretion in failing to immediately release Mr. Mammen on probation when Mr. Mammen completed the long-term treatment program because Respondent has no authority to keep Mr. Mammen in the Department of Corrections past this date of completion, in that section 217.362 requires Respondent to either allow Mr. Mammen to be released on probation or to execute his sentence at the end of the long-term treatment program; furthermore, section 217.362 should control over the provision in section 577.023 that chronic offenders are not eligible for probation or parole until they have served a minimum of two years imprisonment.

A. Standard of Review

This Court has jurisdiction to issue original remedial writs. Mo. Const. art. V, § 4. “This Court reviews a writ of mandamus for an abuse of discretion.” *State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 538 (Mo. banc 2012) (citation omitted). “A litigant seeking mandamus must allege and prove that he or she has a clear, unequivocal, specific right to a thing claimed.” *Id.* (internal quotation marks and citations omitted). “Ordinarily, mandamus is the proper remedy to compel the discharge of ministerial functions, but not to control the exercise of discretionary powers.” *Id.* (citation omitted). “However, if the respondent’s actions are wrong as a matter of law, then he or she has abused any discretion he or she may have had, and mandamus is appropriate.” *Id.* (citation omitted).

B. Analysis

A writ should issue in this case because Respondent exceeded his statutory authority under section 217.362 when he ordered Mr. Mammen to remain in prison past the date that he completed the long-term treatment program. The Eastern District Court of Appeals has held that section 217.362.3 requires courts to either release defendants on probation after completion of the long-term treatment program or execute their sentences. *State ex rel. Salm v. Mennemeyer*, 423 S.W.3d 319, 321 (Mo. App. E.D. 2014). The Eastern District also held the following in *State ex rel. Sandknop v. Goldman*, 450 S.W.3d 499, 502 (Mo. App. E.D. 2014):

[W]hen a defendant is sentenced to a long-term treatment program pursuant to § 217.362 and successfully completes that program, the circuit court's authority is expressly limited to two alternative actions: the circuit court must either release the defendant on probation or execute the defendant's sentence if the court determines that probation is not appropriate. No other action is expressly, or impliedly, permitted under the statute.

Under *Salm* and *Sandknop*, Respondent should have ordered Mr. Mammen's *immediate* release on probation after Mr. Mammen completed the long-term treatment program. Instead, Respondent granted probation, but he ordered for Mr. Mammen to remain in the program for several more months. (Ex. 4).

The only difference between Mr. Mammen's case and *Salm* is that here, Mr. Mammen was sentenced as a chronic offender under section 577.023. (Ex. 2). Section 577.023.6(4) states that "[n]o chronic offender shall be eligible for parole or probation

until he or she has served a minimum of two years imprisonment.” It is apparent that there is a conflict between section 217.362 and section 577.023. On the one hand, section 217.362 requires the court to release a defendant on probation (or execute his or her sentence) as soon as the defendant completes the long-term treatment program. *Salm*, 423 S.W.3d at 321. On the other hand, section 577.023 requires chronic offenders to spend two years in prison before being released. This conflict has left Mr. Mammen in limbo, where he has completed the treatment program yet nonetheless remains imprisoned.

The question before this Court is whether chronic offenders sentenced to long-term treatment under section 217.362 should be subject to the minimum imprisonment requirements established by section 577.023.6(4). Chronic offenders sentenced to long-term treatment should *not* be subject to the requirements of section 577.023.6(4) because that section is a general statute for chronic offenders, while section 217.362 is a specific statute for those sentenced to a long-term treatment program. This Court has stated that “[w]hen the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general.” *Greenbriar Hills Country Club v. Director of Revenue*, 935 S.W.2d 36, 38 (Mo. banc 1996). Here, both sections address the “same subject matter” of when offenders should be released on probation.

As stated earlier, section 217.362.3 requires courts to either release defendants on probation after completion of the long-term treatment program or execute their sentences. *Salm*, 423 S.W.3d at 321. Surely the General Assembly did not intent to create a situation

where chronic offenders complete a long-term treatment program yet remain imprisoned. However, if Section 577.023 controls over section 217.362, this would be the result.

It is much more likely that the General Assembly meant for section 577.023 to apply only to those who were *not* sentenced to a long-term treatment program. Once a defendant *is* sentenced to a long-term treatment program, though, section 217.362 should control over any conflicting statute. This is especially true considering the goal inherent in section 217.362 of helping non-violent criminals become productive members of society by treating their addictions. Keeping these chronic offenders in prison once treatment has occurred would conflict with this goal.

Furthermore, the long term treatment program established by section 217.362 is specifically designed for “*chronic* nonviolent offenders with serious substance abuse addictions . . .” (Emphasis added). The use of the term “chronic” in section 217.362 is surely not a coincidence. The long-term treatment program is an alternative to prison; once a defendant is sent to long-term treatment, section 217.362 should control over statutes generally covering minimum lengths of time that must be spent in prison.

Because Mr. Mammen has successfully completed the long-term treatment program, this Court should issue a permanent writ of mandamus, ordering Respondent to immediately release Mr. Mammen on probation.

CONCLUSION

This Court should issue a permanent writ of mandamus, ordering Respondent to immediately release Mr. Mammen on probation.

Respectfully submitted,

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Certificate of Compliance and Service

I, Samuel E. Buffaloe, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 1,565 words, which does not exceed the 31,000 words allowed for an appellant's brief.

On this 29th day of April, 2015, electronic copies of this Relator's Brief and its appendix were placed for delivery through the Missouri e-Filing System to Caroline Coulter, Assistant Attorney General, at Caroline.Coulter@ago.mo.gov and Adam Warren at mulaw05@yahoo.com.

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